



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: January 12, 2012

Agenda Item No. 8: Consideration for Exemption from the Requirements of the Surface Mining and Reclamation Act (SMARA, Public Resources Code Section 2710 et seq.), Pursuant to Section 2714(f), for the Goose Club Farms North Project, County of Sutter.

INTRODUCTION: The Surface Mining and Reclamation Act of 1975 (SMARA) allows for a one- time exemption for certain surface mining operations should the State Mining and Geology Board (SMGB) determine the operation to be of an infrequent nature and involve only minor surface disturbances. Goose Club Farms North (GCFN), Sacramento Valley Sand, Inc. (Operator), Dane Lowry (Agent), County of Sutter, has submitted a request on December 20, 2011, for a one-time exemption from SMARA to remove silt, sand and debris derived from over flow and flooding from the Feather River onto GCFN's property. The SMGB has the statutory authority to consider and grant such an exemption under certain conditions.

STATUTORY AND REGULATORY AUTHORITY AND CONSIDERATIONS: Public Resources Code (PRC) Section 2735 defines surface mining operations and states:

"Surface mining operations" means all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations shall include, but are not limited to:

- (a) Inplace distillation or retorting or leaching.*
- (b) The production and disposal of mining waste.*
- (c) Prospecting and exploratory activities."*

SMARA allows exemptions pursuant to PRC Section 2714(d) when:

"Prospecting for, or the extraction of, minerals for commercial purposes and the removal of overburden in total amounts of less than 1,000 cubic yards in any one location of one acre or less."



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SMARA allows for a one-time exemption pursuant to Article 1 of Public Resources Code (PRC), Division 2, Chapter 9, Section 2714(f), which states:

“Any other surface mining operations that the board, as defined by Section 2001, determines to be of an infrequent nature and which involve only minor surface disturbances.”

California Code of Regulations (CCR) Section 3501 defines a borrow pit as:

“Excavations created by the surface mining of rock, unconsolidated geologic deposits or soil to provide material (borrow) for fill elsewhere.”

Before exemptions from the provisions of SMARA are granted, the SMGB, pursuant to SMARA and SMGB Resolution No. 93-6, considers the following four criteria:

Criteria 1 - Compliance with the California Environmental Quality Act

(CEQA): Pursuant to PRC Section 2712(a), has an environmental review been completed for the proposed activity either separately or as part of a larger project? PRC Section 2712(a) states *“It is the intent of the Legislature to create and maintain an effective and comprehensive surface mining and reclamation policy with regulation of surface mining operations so as to assure that: (a) Adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses.”*

Criteria 2 - Local authority: Pursuant to PRC Sections 2715 and 2770(a), is the proposed activity permitted or otherwise authorized by a local lead agency? PRC Section 2715 states *“No provision of this chapter or any ruling, requirement, or policy of the board is a limitation on any of the following:*

(a) On the police power of any city or county or on the power of any city or county to declare, prohibit, and abate nuisances.

(b) On the power of the Attorney General, at the request of the board, or upon his own motion, to bring an action in the name of the people of the State of California to enjoin any pollution or nuisance.

(c) On the power of any state agency in the enforcement or administration of any provision of law which it is specifically authorized or required to enforce or administer.

(d) On the right of any person to maintain at any time any appropriate action for relief against any private nuisance as defined in Part 3 (commencing with Section 3479) of Division 4 of the Civil Code or for any other private relief.

(e) On the power of any lead agency to adopt policies, standards, or regulations imposing additional requirements on any person if the requirements do not prevent the person from complying with the provisions of this chapter.



(f) On the power of any city or county to regulate the use of buildings, structures, and land as between industry, business, residents, open space (including agriculture, recreation, the enjoyment of scenic beauty, and the use of natural resources), and other purposes.”

PRC Section 2770(a) states *“Except as provided in this section, no person shall conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by, the lead agency for the operation pursuant to this article.”*

Criteria 3 - End use of the mining or borrow site: Pursuant to PRC Sections 2711(b) and 2712, is the end use or proposed end use of property on which the activity is proposed to occur defined? PRC Section 2711(b) states *“The Legislature further finds that the reclamation of mined lands as provided in this chapter will permit the continued mining of minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land.”*

PRC Section 2712 states *“It is the intent of the Legislature to create and maintain an effective and comprehensive surface mining and reclamation policy with regulation of surface mining operations so as to assure that:*

(a) Adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses.

(b) The production and conservation of minerals are encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment.

(c) Residual hazards to the public health and safety are eliminated.”

Criteria 4 - Impacts of the operation on commercial activities: Pursuant to PRC Section 2714(b), have the potential impacts on commercial interests resulting from the proposed activity been considered? PRC Section 2714(b) states

“Onsite excavation and onsite earthmoving activities that are an integral and necessary part of a construction project that are undertaken to prepare a site for construction of structures, landscaping, or other land improvements, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions:

(1) All required permits for the construction, landscaping, or related land improvements have been approved by a public agency in accordance with



applicable provisions of state law and locally adopted plans and ordinances, including, but not limited to, Division 13 (commencing with Section 21000).

(2) The lead agency's approval of the construction project included consideration of the onsite excavation and onsite earthmoving activities pursuant to Division 13 (commencing with Section 21000).

(3) The approved construction project is consistent with the general plan or zoning of the site.

(4) Surplus materials shall not be exported from the site unless and until actual construction work has commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued."

BACKGROUND: Goose Club Farm North (GCFN) submitted a request via email on December 20, 2011, for a one-time exemption from SMARA to remove silt, sand and debris derived from over flow and flooding from the Feather River onto GCFN's property. GCFN proposes to grade the land so that it is level and suitable for agricultural purposes. About 300 acres of land surface has been previously disturbed. The amount of material previously extracted has been reported by OMR to have exceeded 1,000 cubic yards. The anticipated volume of material to be removed was not available at the time this Executive Officer's report was prepared. No excavation of a pit or trenches is proposed. An aerial view of the project vicinity is shown in Figure 1.

While the specific number of cubic yards of materials that would be excavated and removed is unknown at this time, the Central Valley Flood Protection Board's (CVFPB) permitting process will help to determine this amount with greater certainty. More specifically, this permitting process will require GCFN to submit an updated permit application to the CVFPB, including: (1) an Encroachment Permit Application (CVFPB Form No. 3516) and; (2) an Environmental Assessment Questionnaire (CVFPB Form No. 3615a) and; (3) a Topography map of existing ground elevations and; (4) a Grading plan showing proposed ground elevations with areas of cut or fill.





Figure 1. Aerial view of project area.

DISCUSSION: General threshold criteria triggering SMARA is discussed in PRC Section 2714(d), which indicates that SMARA does not apply to operations where “*Prospecting for, or the extraction of, minerals for commercial purposes where the removal of overburden or mineral product total less than 1,000 cubic yards in any one location, and the total surface area disturbed is less than one acre.*” In this case, the proposed project is subject to SMARA, unless exempted by the SMGB pursuant to SMARA Section 2714(f).

It is recognized that not all surface mining operations are an efficient “fit” under SMARA, and that many projects of limited size, duration, economic and environmental impact would be prevented, delayed, or rendered uneconomic if the requirements of SMARA were fully applied. To address these special situations, SMARA provides the SMGB with authority under PRC Section 2714(f) to grant exemptions under specific conditions when the proposed activity is of an infrequent nature and involves only minor surface disturbance.

The proposed project 1) is anticipated to exceed SMARA's minimum thresholds by disturbing more than one acre of land and 1,000 cubic yards of material for commercial purposes. However, one-time exemptions have been granted by the SMGB in the past in instances

where such thresholds have been significantly exceeded, but not typically when materials are being extracted for export and commercial gain.

Exemption Criteria: The SMGB must contemplate four specific criteria, as discussed above, in considering granting a one-time exemption:

Criteria No. 1: Pursuant to PRC Section 2712(a), has an environmental review been completed on the proposed activity either separately or as part of a larger project?

Finding No. 1: No; however, relevant agencies (including the CVFPB, the Department of Water Resources, the Department of Conservation and Sutter County) have been actively involved in the proposed activity and none have raised any concerns regarding GCFN's ability to comply with CEQA. The only mention of CEQA has been in correspondence from the Central Valley Flood Protection Board ("CVFPB") dated December 21, 2011 (Exhibit A), indicating that the CVFPB "*will support further sediment removal [by GCFN], provided that an upgraded grading plan is submitted as part of an application for a new Reclamation Board Permit.*" GCFN was also informed in that correspondence that the application would require a CEQA Notice of Determination (NOD). A NOD is a brief notice to be filed by a public agency after it approves a project that is subject to CEQA (14 CCR Section 15373) and shall include the determination by the agency that the project will not have a significant effect in the environment (14 CCR Section 15075). The CVFPB also indicated the following regarding GCFN's application: "*[GCFN's] application will be expeditiously reviewed by staff, sent to the U.S. Army Corps of Engineers for comments, and presented to the Central Valley Flood Protection Board for vote. This action, if approved, will authorize Goose Club Farms to remove sediment from the Bypass, which is beneficial to enhancing flood control.*"

Thus, CVFPB's consideration of GCFN's forthcoming application for a new Board permit will include the appropriate level of CEQA environmental review (i.e., the determination by the agency that the project will not have a significant effect in the environment), so as to satisfy PRC Section 2712(a).

Criteria No. 2: Pursuant to PRC Sections 2715 and 2770(a), is the proposed activity permitted or otherwise authorized by a local lead agency?

Finding No. 2: No, but the proposed activity is in the process of being permitted or otherwise authorized by a local lead agency. The proposed project will require GCFN to submit, an updated permit application to the CVFPB, including: (1) an Encroachment Permit Application (CVFPB Form No. 3516), (2) an Environmental Assessment Questionnaire (CVFPB Form No. 3615a), (3) a topographic showing map



existing ground elevations, and (4) a Grading Plan showing proposed ground elevations with areas of cut or fill. GCFN is in the process of completing these application requirements and the CVFPB has indicated that GCFN's "application will be expeditiously reviewed by staff, sent to the U.S. Army Corps of Engineers for comments, and presented to the Central Valley Flood Protection Board for vote."

In correspondence dated December 22, 2011 (Exhibit A), the CVFPB affirmed its *"support for sediment removal from land within the Sutter Bypass provided that the work is done as specified in a valid encroachment permit issues by the [Reclamation] Board."* In correspondence dated December 22, 2011 (Exhibit A), the Department of Water Resources, Division of Flood Management's Flood Maintenance Office also expressed its support of the Board's approval of a one-time exemption under Public Resource Code Section 2714(f) stating *"DWR's Flood Maintenance Office supports property owners efforts, and land uses, that result in improved channel capacity of the flood protection system. The removal of flood related sediment deposits and debris by landowners for agricultural purposes ensures just such channel capacity and furthers statewide flood protection goals. [¶] To this end, the Flood Maintenance Office is supportive of efforts of the [State Mining and Geology] Board and Mr. Lowry to identify a pathway forward that ensures just such continued flood protection."*

Criteria No. 3: Pursuant to PRC Sections 2711(b) and 2712, is the end use or proposed end use of property on which the proposed activity is to occur defined?

Finding No. 3: Yes; the end use or proposed end use of property on which the activity is proposed is defined as restoring the land to agricultural use.

Criteria No. 4: Pursuant to PRC Sections 2714(b), have the potential impacts on commercial interests resulting from the proposed activity been considered?

Finding No. 4: The potential impacts on commercial interests resulting from the proposed activity have been considered. GCFN claims that 1) the materials to be excavated from GCFN's property are not commercial products such as spec-based aggregate, 2) GCFN will not process any of the silt, sand and debris that are proposed to be removed so as to make it suitable on a profitable commercial basis, and 3) is not in the surface mining business and seeks only to remove the material that has been deposited on GCFN's property and to offset its costs in doing so, so that the land may be restored to its agricultural purpose. Accordingly, no impact on commercial interests or competitive advantage exists.



BEFORE THE SMGB: The Executive Officer can deny a one-time exemption request if, upon review, the request does not meet the criteria set forth in SMGB Resolution No. 93-6. However, such a matter can also be placed before the SMGB if 1) a request is made by one SMGB member; 2) the Executive Officer cannot come to a clear consensus; or 3) if controversy arises surrounding the request.

In cases when a request comes before the SMGB, the SMGB can grant a one-time exemption on a case-by-case basis. Prior to granting such exemptions, the SMGB considers, and must assure, that the following criteria have been fully addressed:

- 1) Compliance with the California Environmental Quality Act (CEQA);
- 2) Local authority;
- 3) End use of the mining or borrow site; and
- 4) Impacts of the operation on commercial activities.

EXECUTIVE OFFICER'S RECOMMENDATION: The proposed activity is subject to SMARA. It is the Executive Officer's finding that the one-time exemption request does meet 1) the statutory requirement that the project be of an infrequent nature, and 2) the SMGB's criteria for consideration of such exemptions pursuant to PRC Section 2714(f). It is the Executive Officer's understanding that an application for an updated Reclamation Board Permit is in the process of being prepared and will be expeditiously reviewed. An updated Permit will be required by the CVFPB prior to commencement of any proposed activities of removing silt, sand and debris from the GCFN property.

It is the Executive Officer's conclusion that the one-time exemption request meets the requirements of SMARA and the SMGB's criteria for consideration of such exemptions. Because of the active involvement of the relevant agencies (including the CVFPB, the Department of Water Resources, and the County of Sutter) in the proposed activity, no activity will be conducted by GCFN, without GCFN having first obtained any and all necessary permits. GCFN's Request for Exemption pursuant to PRC 2714(f) is specifically made conditional on GCFN's obtaining any and all such required permits. Based on the information before SMGB staff, and analysis and findings set forth above, it is the Executive Officer's recommendation that the SMGB at this time grant the request for a one-time exemption, on the condition that any and all necessary agency permits are first obtained.



SUGGESTED SMGB MOTION:

To deny the request for a one-time exemption:

Mr. Chairman, in light of the information before the SMGB today, I move that the SMGB find that the project as proposed for the Goose Club Farms North project, and as described in this report and its exhibits, is subject to the requirements of SMARA, and that the SMGB deny a one-time exemption from SMARA for this project under its authority provided by Public Resources Code Section 2714(f).

Or,

To grant the request for a one-time exemption (Option A):

Mr. Chairman, in light of the information before the SMGB today, I move that the SMGB find that the project as proposed for the Goose Club Farms North project, and as described in this report and its exhibits, is subject to the requirements of SMARA, but that the SMGB conditionally grant a one-time exemption from SMARA for this project under its authority provided by Public Resources Code Section 2714(f), pending compliance with all appropriate permit conditions set forth by the County of Sutter, Central Valley Flood Protection Board, and any other agencies that have jurisdiction over any aspects of this project.

Respectfully submitted:



Stephen M. Testa
Executive Officer